

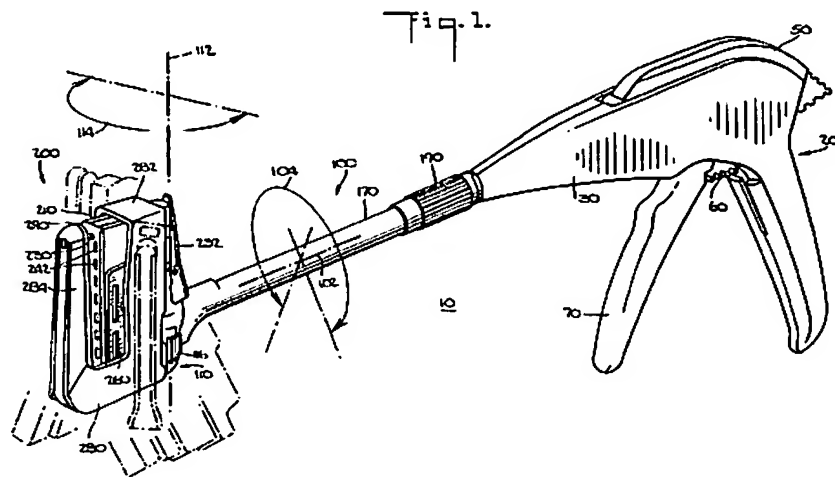
REMARKS

The above-identified application has been reviewed in light of the Office Action mailed on August 1, 2008. By the present amendment, the applicant has added new independent claim 8. It is respectfully submitted that the claims pending in the application, namely claims 2-8, are fully supported by the specification, introduce no new matter, and are allowable over the cited references of record.

The Office Action rejected claims 2-7 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,728,020 to Green et al. ("Green"). The Office Action asserted that Green discloses an elongate member defining a longitudinal axis, a staple storage portion attached to a distal portion of the elongate member and being movable between two positions with respect to the longitudinal axis defined by the elongate member, a control member capable of rotating the elongate member about the longitudinal axis, and an advancing mechanism capable of advancing surgical fasteners through the staple storage portion and an anvil.

Presently, claim 2 recites a surgical stapling apparatus including, *inter alia*, an elongated member having a proximal portion and a distal portion, and defining a longitudinal axis, a staple storage portion attached to the distal portion of the elongated member and adapted for storing at least one surgical fastener, "the staple storage portion being movable throughout a plurality of positions including a first position that is substantially aligned with the longitudinal axis and a second position that is axially offset from the longitudinal axis," and "a control member spaced from the distal portion for rotating the elongate member about the longitudinal axis, the control member being movable from a first position to a second position to effect movement of the staple storage portion from its first position to its second position."

On the other hand, Green relates to a surgical stapler having a fastener applying assembly 200 that is connected to an actuator assembly by a longitudinal shaft assembly 100. As shown below in FIG. 1, the fastener applying assembly 200 includes frame 280 and proximal fastener holding part 210, which is mounted on the distal end of shaft assembly 100 for rotation by hand about axis 112.



The surgeon changes the position of the fastener applying assembly by hand, and the locking ring 190 is utilized to secure the position of the fastener applying assembly- not to actuate a change in position about axis 112. See col. 4, lines 16 through 25 and col. 6, line 52 through col. 7, line 33.

Contrary to the position taken in the Office Action, Green does not disclose or suggest a “staple storage portion being movable throughout a plurality of positions including a first position that is substantially aligned with the longitudinal axis and a second position that is axially offset from the longitudinal axis,” and “a control member spaced from the distal portion for rotating the elongate member about the longitudinal axis, the control member being movable from a first position to a second position to effect movement of the staple storage portion from

its first position to its second position” as recited in claim 2. As shown above in FIG. 1, locking ring 190 is merely configured to rotate shaft assembly 100 about axis 102. Locking ring 190 is not configured to move “from a first position to a second position to effect movement of the staple storage portion from its first position to its second position” where the staple storage portion’s second position is “axially offset from the longitudinal axis” as recited in claim 2. The only way to axially offset frame 280 in Green would be by grasping frame 280 and rotating it by hand about axis 112 within the limits indicated by the ends of double-headed arrow 114. Accordingly, it is respectfully submitted that claim 2 is not anticipated or suggested by Green. Further, since claims 3-7 depend from independent claim 2, it is respectfully submitted that these claims are also in condition for allowance. Therefore, it is respectfully requested that the rejection of claims 2-7 be withdrawn.

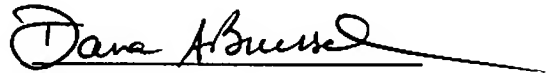
The Applicant has added new claim 8. As presented, independent claim 8 recites an apparatus including, *inter alia*, an elongated member defining a longitudinal axis, a staple storage portion movable throughout a plurality of positions, and a control member rotatable to effect rotation of the elongate member and movable along the longitudinal axis from a first position to a second position to effect movement of the staple storage portion throughout a plurality of positions. As discussed above, Green fails to disclose or suggest a control member for rotating an elongated member and repositioning a staple storage portion as recited in claim 8. Therefore, it is respectfully submitted that claim 8 is not anticipated or suggested by the references of record and that it is in condition for allowance.

Appl. No. 10/753,248
Amdt. dated October 31, 2008
Reply to Office Action mailed August 1, 2008

In view of the foregoing, it is respectfully submitted that all claims presently pending in the application, namely claims 2-8, are in condition for allowance. Should the Examiner believe that a telephone or personal interview may facilitate resolution of any remaining matters, the Examiner is respectfully requested to contact the Applicant's undersigned attorney at the telephone number indicated below.

Respectfully submitted,

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